
Site Address:	Fiscal House, 2 Havant Road, Emsworth, PO10 7JE		
Proposal:	Removal of Condition 3 of Planning Permission APP/17/00634.		
Application No:	APP/18/00827	Expiry Date:	10/10/2018
Applicant:	Mr & Mrs P A Munday		
Agent:	Edward Caush	Case Officer:	Lewis Oliver
	Edward Caush Associates		
Ward:	Emsworth		

Recommendation: **REFUSE PERMISSION**

1 Site Description

Fiscal House is located in the northwest corner of the Emsworth Conservation Area. The property is formed of a two storey block fronting Havant Road that has a modern shop frontage and a single storey rear/side elevation facing onto Warblington Road. The application site is adjacent to number 4 Havant Road, a grade II listed former service block to another nearby listed building. The site benefits from car parking in the former depot area, which provides allocated parking for each office unit. The site is located in flood zones 2 and 3.

2 Planning History

90/52444/002 - C/U of existing Unigate Dairy site with associated offices into office accommodation at ground and 1st floor level for Accountancy practice., PERM,19/06/1990

02/52444/007 - Change of use of existing office space at ground floor level to a private hire office and erection of a 4.34m radio antenna on chimney stack (1.9m of which will extend above existing chimney pot)., TPP,11/12/2002

98/52444/006 - Change of use to taxi office and erection of 4.6m (15ft) radio antenna (retrospective application)., TPP,21/04/1998

92/52444/003 - Retention of internally illuminated fascia sign, REF,02/04/1992

93/52444/004 - Prior notification for telecommunications terminal block and cabling, WD,22/12/1993

93/52444/005 - Notification as to whether prior approval is required for cables, terminal block and underground duct., PANR,21/01/1994

APP/16/01218 - Application for Lawful Development Certificate relating to existing use of site for office purposes., WD,07/02/2017

APP/17/00634 - Change of use from financial services (Class A2) to offices (Class B1A)., PERM,21/08/2017

3 Proposal

The proposal is for the Removal of Condition 3 of Planning Permission APP/17/00634. This condition was: The development hereby permitted shall be used only for B1A(Offices), and for no other purpose whatsoever including any other purpose in Class B of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order. **Reason:** To restrict the use of the premises in the interests of local amenity as residential properties are around the application site, and to retain the site in employment use, having due regard to Policies CS2, CS16

and DM10 of the Havant Borough Local Plan (Core Strategy) 2011.

The applicant outlines in the Design & Access Statement that they consider that the imposition of a condition to control the use, as applied for under APP/17/0063, for B1(a) is unreasonable. In that the retention of the site for solely employment use is not justified by the clauses in the reason provided or the policies to support them. The relevant material planning considerations are considered below.

4 Policy Considerations

National Planning Policy Framework
Havant Borough Council Borough Design Guide SPD December 2011
Havant Borough Council Parking SPD July 2016

Havant Borough Local Plan (Core Strategy) March 2011

CS11 (Protecting and Enhancing the Special Environment and Heritage of Havant Borough)
CS15 (Flood and Coastal Erosion)
CS16 (High Quality Design)
CS2 (Employment)

Havant Borough Local Plan (Allocations) July 2014

AL1 (Presumption in Favour of Sustainable Development)
AL2 (Urban Area Boundaries and Undeveloped Gaps between Settlements)

Listed Building Grade: Not applicable.
Conservation Area: Emsworth

5 Statutory and Non Statutory Consultations

Conservation Officer, Development Control

No Objection

Developer Services, Southern Water

Southern Water directs the Local Planning Authority to the response under the previous application APP/17/00634. This was:

Southern Water requires a formal application for any new connection to the public foul and surface water sewer to be made by the applicant or developer.

We request that should this application receive planning approval, the following informative is

attached to the consent:

“A formal application for connection to the public sewerage system is required in order to service this development, please contact Southern Water, Sparrowgrove House Sparrowgrove, Otterbourne, Hampshire SO21 2SW (Tel: 0330 303 0119) or www.southernwater.co.uk”.

It is the responsibility of the developer to make suitable provision for the disposal of surface water. Part H3 of the Building Regulations priorities the means of surface water disposal in the order

a Adequate soakaway or infiltration system

b Water course

c Where neither of the above is practicable sewer

Southern Water supports this stance and seeks through appropriate Planning

Conditions to ensure that appropriate means of surface water disposal are proposed

for each development. It is important that discharge to sewer occurs only where this is necessary and where adequate capacity exists to serve the development. When it is proposed to connect to a public sewer the prior approval of Southern Water is required.

Due to changes in legislation that came in to force on 1st October 2011 regarding the future ownership of sewers it is possible that a sewer now deemed to be public could be crossing the above property. Therefore, should any sewer be found during construction works, an investigation of the sewer will be required to ascertain its condition, the number of properties served, and potential means of access before any further works commence on site.

The applicant is advised to discuss the matter further with Southern Water, Sparrowgrove House Sparrowgrove, Otterbourne, Hampshire SO21 2SW (Tel: 0330 303 0119) or www.southernwater.co.uk

Environment Agency, Romsey Depot

Objection - requires the submission of Flood Risk Assessment

Planning Policy

Response awaited

6 Community Involvement

This application was publicised in accordance with the Council's Code of Practice for Publicity of Planning Applications approved at minute 207/6/92 (as amended), as a result of which the following publicity was undertaken:

Number of neighbour notification letters sent: 12

Number of site notices: 1

Statutory advertisement: 31/08/2018

Number of representations received: 2

Comment	Officer Comment
I wish to advise that my wife and I wish to oppose this application due to the likelihood that we would be overlooked. Additionally the added noise aspect and vehicle movement around the area would be significantly increased. It is also worth adding that significant bat activity on all sides of Fiscal House can be observed at dusk.	This proposal does not seek to change the use of the existing building

7 Planning Considerations

7.1 Having regard to the relevant policies of the development plan it is considered that the main issues arising from this application are:

- (i) Principle of removal of condition 3
- (ii) Principle of loss of employment
- (iii) Impact upon character and appearance of area, residential amenity and

highways

- (iv) Impact on flooding
- (v) Other matters

(i) Principle of removal of condition 3

This application is for the removal of condition 3, which was attached to the previous approved planning APP/17/00634. When the Local Planning Authority considers the imposition of conditions on planning permissions it must comply with the six tests relating to planning conditions outlined in the NPPF, which are that conditions are:

- (1) necessary
- (2) relevant to planning
- (3) relevant to the development to be permitted
- (4) enforceable
- (5) precise
- (6) reasonable in all other respects

The reason for condition 3 was "To restrict the use of the premises in the interests of local amenity as residential properties are around the application site, and to retain the site in employment use, having due regard to Policies CS2, CS16 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011".

The case of *I'm Your Man V Secretary of State* established the principle that if a limitation is to be imposed on a permission granted pursuant to an application, it must be done by condition. It was held that, in the absence of a specific condition, that the description of development does not expressly provide a power to impose limitations on the grant of planning permission pursuant to an application. Consequently, any essential restrictions relating to limitation on use, must be secured by condition, even where the description of development purports to contain the 'limitation'. It is noted that the agent for this application considers that the imposition of the condition to control the use of the site, to that which was applied for, is unreasonable. However, given the above noted caselaw, it is considered that in principle imposition of a condition restricting the use is reasonable and complies with the tests as outlined above.

Condition 3 did outline that one of the reasons to control the use of the building was in the interests of local amenity as residential properties are around the application site. Having regard to the Town and Country Planning (Use Classes) Order 1987 and its subsequent amendments, it noted that without a condition restricting the site to B1(a), that permitted development rights could be engaged, the uses that could include are: B1(b): Research and development of products and processes, B1(c): Light industry, and/or B8 Storage and Distribution. Given these potential changes, which are materially and substantially different to B1(a) Offices. It is considered that given the close proximity of neighbouring residential properties that, without control from the Local Planning Authority these changes could have a significant adverse impact on the amenities of neighbouring properties, this is considered in detail further below.

(ii) Principle of loss of employment

The agent for this application stated intention with the submitted Design & Access Statement is once permission has been granted to remove condition 3 is, as outlined above, to apply for prior approval to residential use. The agent also outlines that they consider the imposition of condition 3 was unreasonable in terms of restricting the use of the site to B1(A) Offices, given that the Local Planning Authority had an opportunity

at the strategic level, to control the loss of offices, when the Government introduced the permitted development rights to convert from office to residential. Whilst it is acknowledged that Havant Borough Council does not benefit from the exemptions of Class O, as it does not fall within article 2(5) land. The LPA does seek to retain office accommodation of this nature on a case by case basis, when it is in a sustainable location, such as this site by being close to the town centre of Emsworth. Otherwise it would result in an uncontrolled loss of employment. Therefore it is considered reasonable and necessary in certain circumstances to seek to control new B1(a) office space.

Having established that in the view of the LPA that condition 3 is necessary, it is worth assessing the reason behind the condition with regard to the employment. Having regard to the principle of the land use, this section of the report considers its impact and whether there is a requirement to retain the site in employment, with the relevant policy being policy CS2 - Employment of the Core Strategy 2011. As noted above that without a condition restricting the site to B1(a), that permitted development rights could be engaged, the uses that could include are: B1(b): Research and development of products and processes, B1(c): Light industry, and/or B8 Storage and Distribution.

As a starting point policy CS2, outlines that any uses within B classes are considered to be employment uses. As such the LPA must consider what the impact of removing this condition would be, and would it result in the loss of an employment site, taking into account the permitted development rights, including any changes of uses that would require a prior approval application, which in this case could be from B1(a) Offices to C3 residential. Firstly the permitted development regime does in this case allow a change of use from B1(a) Offices to B1(b): Research and development of products and processes, B1(c): Light industry, and/or B8 Storage and Distribution. As such in given this, whilst the loss of B1(a) offices would occur, there are no requirements in policy that B1(a) offices must be retained, the policy only refers to B class employment uses. Therefore in this regard the removal of condition 3 would still retain an employment use on the site, albeit as outlined further in this report concerns are outlined regarding allowing unfettered B use classes on this site and impact on the amenity of the area.

Applicants position

The agent in this application has made reference in the submission that should this application be successful then an application to apply for Prior Approval under Class O of GPDO 2015 would be made, which is to convert offices to residential. Whilst this is not the application before the Local Planning Authority, it is worth noting that one of the conditions of Class O.1 (b), outlines that the development is not permitted by class O if - the building was not used for a use falling within Class B1(a) (offices) of the Schedule to the Use Classes Order-

- (i) on 29th May 2013, or
- (ii) in the case of a building which was in use before that date but was not in use on that date, when it was last in use;

As the previous application to change the use of the building to B1(a) was permitted on 21/08/2017 then this site would not benefit from these permitted development rights. This is clarified in the application form for application APP/17/00634, under question 3, which stated that the change of use has not started and was signed by the agent on 8/6/17. As such given the evidence before the LPA, it is not considered at this point that this site would benefit from the Permitted Development rights under Part O of the GPDO . Furthermore one of the conditions under Class O.2 is that the

developer must apply to the Local Planning Authority for a determination as to whether the prior approval of the authority will be required as to: (c) flooding risks on the site. The site lies within both flood zones 2 and 3, and as such this would be a relevant consideration if an application for prior approval was made.

Therefore in overall conclusion on this issue, it is considered that in this instance the removal of condition 3 is justified and would comply with policy CS2 with regard to retaining an employment use on the site. This is because if the applicant would seek to utilise permitted development rights this would still retain employment uses, by being in B1(b), B1 (c) and B8. Whilst the LPA are aware of the applicants intentions to seek to apply under the prior approval mechanism under Class O, Office to residential, given the information outlined above, it is unlikely that this site would benefit from this procedure as it does not comply with the relevant conditions. Therefore in this instance and taking into account all material considerations it is not considered that it would be reasonable for the Local Planning Authority to refuse this application on this issue, as the proposal would retain an employment use of the site.

(iii) Impact upon the character and appearance of the area, residential amenity and highways

Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires planning authorities, when considering whether to grant planning permission for development which affects a Conservation Area, to have special regard to the desirability of preserving or enhancing the character and appearance of that area. It is considered that the office use in this location is considered acceptable and does not have a significant adverse impact on the amenities of neighbouring properties with regard to noise or general disturbance and in this respect, is considered acceptable.

It is considered there is clear potential for the scale and intensity of these other uses, particularly with regard to B8 (Storage and Distribution) as outlined above, to appear dominant and intrusive to the amenities currently enjoyed by the adjoining residential properties, and not suitable for this area particularly with regard to the limited access and junction arrangements adjacent to the site on the corner of Havant Road and Warblington Road. Having regard to these concerns, and on the basis of the limited information submitted with the application, it has not been demonstrated that the other permitted uses under the Town and Country Planning (Use Classes) Order 1987 and its subsequent amendments, would not have a significant adverse impact on the amenities of the neighbouring properties. As such the removal of condition 3 is considered to conflict with policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011.

(iv) Impact on flooding

The application site is located in flood zones 2 and 3. The commentary at P73.04 of the Encyclopaedia of Planning Law and Practice says section 73 applications: "...only confers power to amend or remove conditions and not to amend any other part of the permission e.g. the description of development". The Guidance also says: "In deciding an application under section 73, the local planning authority must only consider the disputed condition/s that are the subject of the application - it is not a complete reconsideration of the application" and "In granting permission under section 73 the local planning authority may also impose new conditions - provided the conditions do not materially alter the development that was subject to the original permission...". The Environment Agency have objected to this application as no flood risk assessment has been submitted. However, this site does have the existing fall back of

the original application APP/17/00634, if this application were to be granted it would allow for other employment uses as outlined above, and as such it is not considered that by allowing other employment uses would put the site or occupiers at great risk in a flood event.

In addition as the agent has outlined in the D&A statement in this submission, the applicant wishes to apply for Prior Approval under Class O of GPDO 2015, to convert offices to residential. One of the conditions under Class O.2 is that the developer must apply to the Local Planning Authority for a determination as to whether the prior approval of the authority will be required as to: (c) flooding risks on the site. As such this would be a relevant consideration if an application for prior approval was made. In order to advise the applicant it is considered appropriate to add an informative to this effect, to inform the applicant of this requirement, that this is a required in any prior approval application.

8 Conclusion

It is considered that in this instance the removal of condition 3 is justified and would comply with policy CS2 with regard to retaining an employment use on the site. This is because if the applicant would seek to utilise permitted development rights this would still retain employment uses, by being in B1(b), B1 (c) and B8. Whilst the LPA are aware of the applicants intentions to seek to apply under the prior approval mechanism under Class O, Office to residential, given the information outlined above, it is unlikely that this site would benefit from this procedure as it does not comply with the relevant conditions . Therefore in this instance and taking into account all material considerations it is not considered that it would be reasonable for the Local Planning Authority to refuse this application on this issue, as the proposal would retain an employment use of the site.

However it is considered that to allow the removal of condition 3, would have an adverse impact on residential amenity and highway impact as the Town and Country Planning (Use Classes) Order 1987 and its subsequent amendments, it noted that without a condition restricting the site to B1(a), that permitted development rights could be engaged, the uses that could include are: B1(b): Research and development of products and processes, B1(c): Light industry, and/or B8 Storage and Distribution. Given these potential changes, which are materially and substantially different to B1(a) Offices, it is considered that given the close proximity of neighbouring residential properties that, without control from the Local Planning Authority these changes could have a significant adverse impact on the amenities of neighbouring properties and not suitable for this area particularly with regard to the limited access and junction arrangements adjacent to the site on the corner of Havant Road and Warblington Road. As such it is considered that the development have a significant adverse impact on the amenities of the neighbouring properties. As such the proposal is considered to conflict with policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011.

9 RECOMMENDATION:

That the Head of Planning be authorised to **REFUSE PERMISSION** for application APP/18/00827 for the following reason

- 1 Without control of the use of the site given by condition 3, the other permitted uses under the Town and Country Planning (Use Classes) Order 1987 and its

subsequent amendments, would allow uses which are materially and substantially different to B1(a) Offices. These other uses could comprise B1(b), B1(c) and B8 (Storage and Distribution). It is considered that given the close proximity of neighbouring residential properties that, without control from the Local Planning Authority, these changes could have a significant adverse impact on the amenities of neighbouring properties and would not be suitable for this area, particularly with regard to the limited access and junction arrangements adjacent to the site on the corner of Havant Road and Warblington Road. As such it is considered that the proposal could have a significant adverse impact on the amenities of the neighbouring properties and road users. Overall it is considered that the proposal to remove condition 3 would conflict with policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011.